70-6

IN THE

Supreme Court of the United States

October Term, 1970

No. 358

NELLIE SWARB et al.,

Appellants

v.

WILLIAM M. LENNOX et al.,

Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania

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BRIEF OF THE PENNSYLVANIA CREDIT UNION LEAGUE AS AMICUS CURIAE

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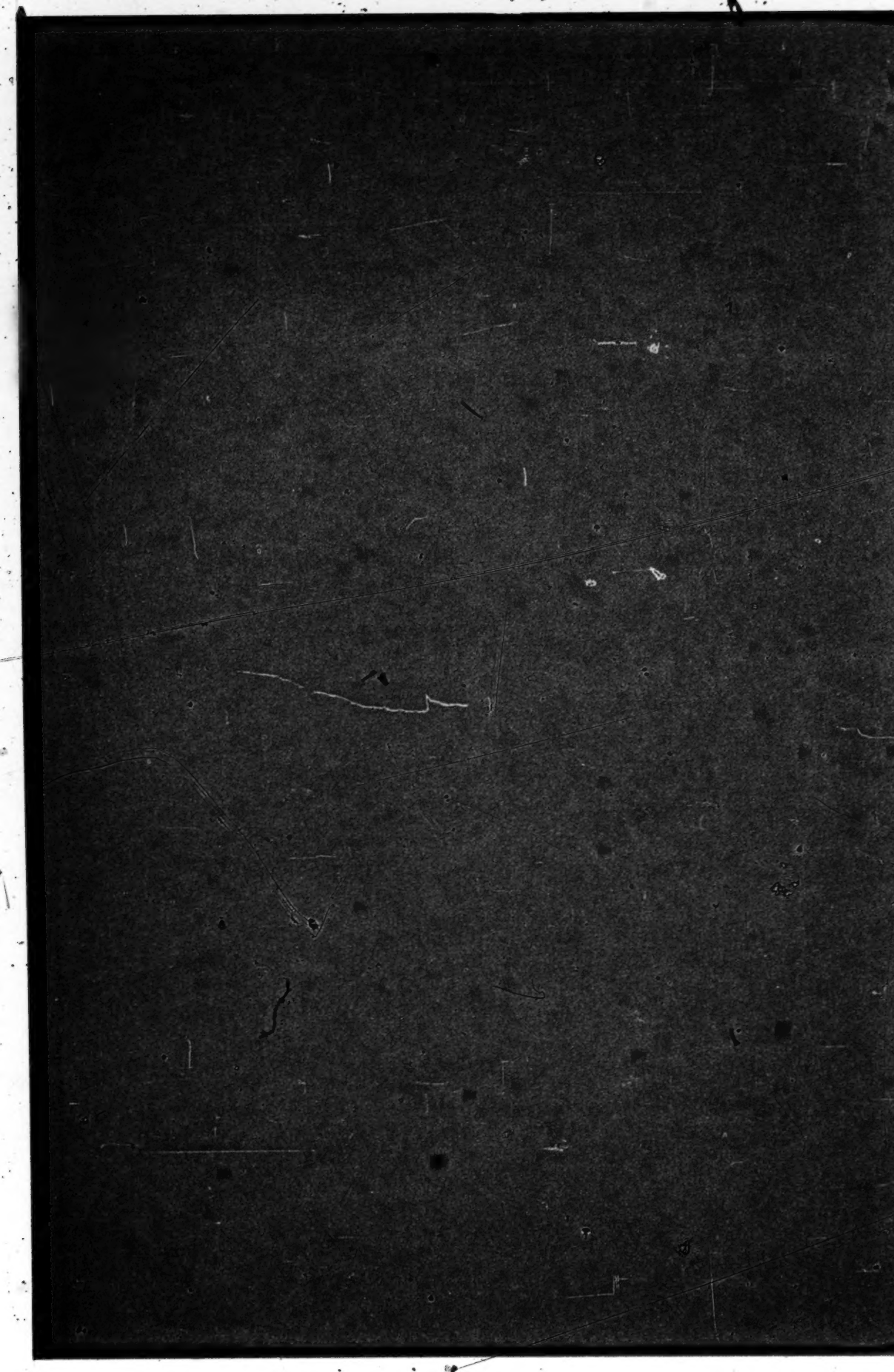

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INTEREST OF THE AMICUS CURIAE

The Pennsylvania Credit Union League (hereinafter referred to as "the League"), which files this brief with leave of this Court,[1] is a non-profit association of federal credit unions, chartered under the Federal Credit Union Act, 12 U.S.C. 1751 *et seq.*, and the Pennsylvania Credit Union Act, 15 P.S. 12301 *et seq.* The membership of the League consists of 1,329 federal credit unions and 121 state credit unions with a combined individual membership of 983,146 persons, and assets of $678,977,622.[2]

The interests of federal and state-chartered credit unions are not represented in this suit, and their statutory organization, purposes and powers differ from those of any other party to this suit.

Section 2(1) of the Federal Credit Union Act (12 U.S.C. 1752(1)) defines a federal credit union as "a cooperative association organized in accordance with the provisions of this Act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes; . . ."

A credit union chartered under the Pennsylvania Credit Union Act is defined in Section 2 (15 P.S. 12302) thereof as "a cooperative association incorporated under this Act or under the Act of May 26, 1933 (P.L. 1076), its amendments and supplements, for the purpose of promoting thrift among its members and creating a source of credit for such members, at reasonable rates of interest, for provident purposes."

At Section 10 thereof (12 U.S.C. 1759), the Federal Credit Union Act defines eligibility for membership in federal credit unions as follows:

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[1] The League's motion for leave to file its brief as *amicus curiae* was granted on June 21, 1971.

[2] All figures as to number of credit unions, individual membership and assets are stated as of December 31, 1970; however, all such figures have increased as of this writing.

> ". . . Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district."

Similarly, under the Pennsylvania Credit Union Act, the membership of state-chartered credit unions is limited by the provisions of Section 6A (15 P.S. 12306A) as follows:

> "Credit union organizations shall be limited to groups having a potential membership of one hundred or more adult persons and a common bond of association within a well defined community or rural district by reason of occupation or of membership in a religious congregation or fraternal or labor organization. The membership of a credit union shall be limited to and consist of the incorporators of the credit union and such other persons, having the common bond of association, set forth in the Articles of Incorporation as have been duly admitted members, have paid the entrance fee as provided in the by-laws, have subscribed for one or more shares, and have paid the initial installment thereon. Organizations composed principally of the same group as the credit union membership may be members. Employes of credit unions may be members of such credit unions."

Both the Federal Credit Union Act, at Section 8 (12 U.S.C. 1757), and the Pennsylvania Credit Union Act, at Section 5 (15 P.S. 12305), empower credit unions to receive the savings of their *members only* and to make loans to *members only;* provided, however, that such loans are limited "for provident or productive purposes."

The interest of the Pennsylvania Credit Union League, as an *amicus curiae* in this matter, is the representation

of the interests of federal and state credit unions in Pennsylvania, which statutory organizations are unique, and therefore vulnerable, in the context of the far reaching nature and scope of consumer credit transactions. Furthermore, the League recognizes that the decision of the Court in this case will have an immediate effect upon the 307 federal credit unions and the 30 state credit unions in Philadelphia County, which credit unions have a combined individual membership of 247,638 persons and assets of $174,204,940; and that, ultimately, the decision of this Court will have a similar effect upon the remaining 1,022 federal credit unions and 91 state credit unions having a combined individual membership of 735,508 persons and assets of $504,772,682, throughout the Commonwealth of Pennsylvania.

Moreover, under the provisions of the Federal Credit Union Act and the Pennsylvania Credit Union Act, the officers and directors of individual credit unions are charged with the strict duty to protect the savings of their members. This is accomplished, *inter alia,* through prudent investment and lending policies and procedures employed by the constituent members of the League.

The League is appearing in this suit on the side of the appellees, for reasons which are set out in detail herein. This posture notwithstanding, the League and its constituent member credit unions have consistently endorsed reasoned judicial determinations and sound legislative and social action for consumer protection. Credit unions are *membership* organizations in the nature of cooperative associations. They exist for the mutual benefit of their members. They provide a depository for savings and a source of credit for the "little man"[3] who historically had no other safe place to save his money and no

[3] A caricature of the "little man" holding an open umbrella against "hard times, sickness and financial distress" has been the traditional symbol of the credit union movement.

other understanding place to borrow for necessary purposes.[4] Because of its consumer orientation, the League deplores *any* calculated abuse or continuing misapplication of *any* law to the detriment of *any* person in society. However, the substantive benefits of the statutes and procedures under attack in this suit have been such an integral part of the constructive growth and service of credit unions in Pennsylvania that the League has resolved to come to their defense.

The protective interest of the League in the statutes and procedures which are the subject of this suit is not unqualified, for incidents of misuse of legal process are a matter of common knowledge. Your *amicus curiae* submits, however, that the confession of judgment process is both substantively and procedurally valid and constitutional, as a fundamental matter. It is acknowledged that the process is subject to abuse as a matter of specific pernicious intent; however, it is submitted that there is no principal of constitutional interpretation that the fact that a law *may* be the subject of intentional circumvention or misapplication taints such law as unconstitutional *per se*.

The interest of the League in the preservation of the confession of judgment process is, *primarily*, in its use as a security device and, *secondarily*, in its use as a remedial process.

The Federal Credit Union Act, at Section 15 (12 U.S.C. 1761c), requires that individual loans in excess of an amount determined by a statutory formula be "adequately secured:"

> "No loan which is not adequately secured may be made to any member, if, upon the making of that

[4] E.g., the growth and development of credit unions has traditionally been regarded, not as an "industry" or "business", but as a social and economic "movement." The process is, in fact, properly referred to as "the credit union movement."

loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which, in the case of a credit union whose unimpaired capital and surplus is less than $8,000, would exceed $200, or which, in the case of any other credit union, would exceed $2,500 or 2½ per centum of its unimpaired capital and surplus, whichever is less."

Credit unions chartered under the Pennsylvania Credit Union Act are authorized to establish, by resolutions of their boards of directors, respective unsecured loan limits beyond which loans must be secured.[5]

The League is concerned that the invalidation of the Pennsylvania confession of judgment procedures will effectively impair the ability of state and federal credit unions in Pennsylvania to serve their members adequately; but, more importantly, will impair the ability of individuals, who are members of credit unions, to obtain credit at reasonable rates from their credit unions, for the reason that such loans could not be secured by the one type of collateral which many such individuals are able to offer: a realty lien[6] obtained through a consensual judgment, entered by confession. It should be recognized that, in many instances, the only stable collateral that an

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[5] Section 12 of the Pennsylvania Credit Union Act (15 P.S. 12312) provides as follows:

"The directors shall have general management of the affairs of the credit union and are specifically required:

* * * * * * *

(7) To determine the maximum individual shareholdings and, subject to the limitations contained in this act, the maximum individual loan which can be made with or without security; . . ."

[6] Such a security interest is commonly referred to as a "poor man's mortgage."

individual is in a position to offer as security for a loan is a lien—primary, secondary or tertiary—on his home.[7]

Federal and state credit unions are limited to a finance charge of one per centum per month on unpaid loan balances, and are not authorized to pass *any other costs* on to the member-borrower. Thus a credit union making a $500 loan to a member who owns real estate, the ownership of which is a material factor in the extension of credit, must, without the benefit of the confession of judgment procedure, consider the use of a mortgage as a lien, at a cost of $100 attorney's fees, plus recording fees; or, in the alternative, granting a loan without security, realizing that, in the event of default, it would be obliged to employ an attorney at a cost of $90 to $190 in attorney's fees, for the preparation and filing of a complaint, and filing and service fees in excess of $25. These figures are based on the Philadelphia Bar Association Minimum Fee Bill published in March 1971, and must be absorbed by the credit union in its statutory interest rate. On the other hand, a credit union can secure a credit transaction by confession of judgment at a cost of $6 to $12. The confession of judgment makes many credit union loan transactions feasible where otherwise they may not be.

The primary interest of the League is, therefore, in a security device which will permit credit unions to serve their members, through the availability of credit at reasonable rates, and to comply fully with their enabling statutes.

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[7] In those jurisdictions where no security lien is available by confessed judgment, the credit union member who has no other property with which his loan may be "adequately secured" must: (1) be denied credit; or (2) make a wage assignment (a procedure which is not available in Pennsylvania); or (3) obtain a co-maker who is willing to pledge his property as collateral, and who renders himself primarily liable on the debt; or (4) pledge his share account balance, and obtain a pledge of the shares of his co-makers, thus impairing the ability of his co-makers to obtain individual credit for themselves.

A security device clearly implies an *ability*, although not necessarily a specific *intent*, to execute on it in the event of default; thus, the execution aspects of the challenged Pennsylvania statutes and procedures are a secondary consideration with the League.

The argument shall proceed in accordance with the League's priority of concern.

QUESTION PRESENTED

It is not the usual practice for an *amicus curiae* to restate the question presented to the Court. However, in this instance the *amicus curiae's* interpretation of the question has been disputed by the appellants and, in fact, was the basis of appellants' refusal to consent to the League's participation in this appeal.

Initially, appellants had objected to the League's participation beyond a discussion of the exceptions to the injunctive order of the Court below relating to the confession of judgment process, to wit: individual and conjugal incomes; mortgage transactions; and intentional, understanding and voluntary conduct.

As finally stated in appellants' brief:

> "The question presented on this appeal is whether the Pennsylvania confession of judgment procedure is in violation of the due process clause of the fourteenth amendment of the United States Constitution *on its face* rather than as applied to only certain individuals or transactions." (Emphasis supplied.)

Thus stated, the question before the Court is the constitutionality of the challenged Pennsylvania statutes and rules of procedure relating to confessions of judgment, as a fundamental matter, rather than the limited issue of the validity or reasonableness of the exceptions of the injunctive order of the Court below. In short, the appellants' statement of the question admits of a discussion of the entire spectrum of constitutional considerations in this suit; and the League's argument will proceed on that basis.

SUMMARY OF ARGUMENT

I. The procedures for entry of judgment by confession and for execution on such judgment are severable. The entry of judgment by confession does not deprive the judgment debtor of "any significant property interest."

II. A. It is a constitutional principle that there is a presumption in favor of the validity of state legislative enactments. The lower Court erred in concluding that the execution of a judgment note constitutes a waiver of constitutionally protected rights; and in concluding that the typical judgment debtor was uninformed as to his liability upon executing an instrument containing a warrant of attorney to confess judgment.

1. The confession of judgment procedure does not deprive the judgment debtor of an opportunity for a hearing. Under Pennsylvania law the judgment debtor has available to him pre-execution procedural remedies to open or to strike a judgment.

2. Under the Truth-in-Lending Act any creditor who retains a security interest, whether actual or potential, in connection with a consumer credit transaction must provide prescribed statutory disclosures to the consumer; and, in prescribed instances, must afford the consumer an opportunity to rescind the transaction.

B. A confession of judgment is contractual; it is a method by which the creditor evaluates the risk to which he puts his goods and capital.

C. A judgment debtor has pre-execution remedies available to him in the form of a petition to open or petition to strike a judgment. There has been no showing that such procedures are uniformly more expensive than would be the defense of an action in assumpsit commenced in the conventional way.

D. The judgment debtor is afforded due process under the fourteenth amendment in that he is afforded a full opportunity for hearing prior to execution on the judgment.

III. Under the Pennsylvania Rules of Civil Procedure, the judgment creditor bears the burden of providing meaningful and provable notice to the judgment debtor prior to execution.

ARGUMENT

I. A Clarification of the Issue.

The matter before the Court is the constitutionality of certain statutes and rules of procedure which are *sequentially* related. In the first instance, the Court has been asked to pass upon a statutory method of obtaining a judgment;[8] and, secondly, upon the validity of procedures for executing on that judgment.[9] Despite appellants' contention to the contrary, these procedures are severable and must be considered in that light. Entry of judgment, by confession or otherwise, does not automatically lead to the process of execution and this fact must be recognized; the failure of appellants to acknowledge the separate and distinct character of the judgment and execution processes is a major deficiency in their presentation and a major fallacy in their underlying premises.

In viewing judgment and execution as an inextricably whole process, appellants have attempted to induce a construction that the entry of judgment is a deprivation of property *per se,* and that such entry of judgment is tantamount to an execution. This is misleading. The entry of judgment *per se* does not constitute an order to any public officer to perform any act depriving the judgment debtor of "any significant property interest."[10] In short, if there is a deprivation of property at any point, it is in the execution, not in the entry of judgment. Hence, these processes will be treated separately.

II. Entry of Judgment by Confession.

A. *General*

It is a constitutional principle of long standing that there is a presumption in favor of the validity of state legislative enactments, and that the Court will not intervene in the implementation or enforcement of the same

[8] Pa. Stat. Ann., tit. 12, § 738; Pa. Stat. Ann., tit. 12, § 739; Pa. Stat. Ann., tit. 17, § 1482. (See Appendix "A").

[9] Pa. R.C.P. 2950 to 2976. (See Appendix "A").

[10] *Boddie v. Conn.*, U.S. , 28 L.Ed. 2d 113, 119 (1971).

unless such laws are demonstrably in excess of the power of the legislature: *West Coast Hotel Co.* v. *Parrish,* 300 U.S. 379 (1937). Furthermore, it is not to be presumed that state courts will be derelict in their duty to give full effect to federal constitutional rights: *Scott* v. *Henslee,* 104 F. Supp. 218 (D.C. Ark, 1952). The Pennsylvania courts have always been dedicated to the preservation of substantive and procedural "due process of law" in protecting the individual against arbitrary state action: *Commonwealth ex rel. McGlinn* v. *Smith,* 344 Pa. 41 (1942).

The appellants have attacked the procedure of entry of judgment by confession as a deprivation of property without due process of law. They have not shown that the entry of judgment *per se* substantially affects property rights in any manner which is constitutionally offensive; but, more importantly, there has been no showing that the entry of judgment by confession constitutes a deprivation of property by any standard.

The League, as *amicus curiae,* is under no illusions that there have been no abuses of the confession of judgment procedures by reason of which unscrupulous individuals have profited at the expense of the unwary. However, it is submitted that an evaluation of due process is not merely a matter of isolating selected statutory provisions for random critique.

Fundamentally, an analysis of the propriety of a consumer credit transaction should begin at its inception. Here the Court below erred in two respects: first, in concluding that the execution of a judgment note constitutes a waiver of constitutionally protected rights (i.e., that the signer of the note has no adequately protective recourse against his creditor in the event that the transaction should abort); and, second, in concluding that the typical judgment debtor was uninformed as to his liability upon executing an instrument containing a warrant of attorney to confess judgment.

1. Waiver of a Constitutional Right

Appellants contend that one has a constitutional right not to have a judgment entered against him without a pre-judgment hearing. In support of this contention, appellants have cited cases where well-defined property rights or state benefits were removed, suspended or sequestered prior to hearing on the merits: *Sniadach* v. *Family Finance Corporation,* 395 U.S. 337 (1969),[11] where the debtor's wages were frozen in a pre-judgment wage garnishment; *Goldberg* v. *Kelly,* 397 U.S. 254 (1970), where welfare benefits were withheld prior to a hearing on the merits; *Bell* v. *Burson,* 39 U.S.L.W. 4607 (U.S., May 24, 1971), where an uninsured motorist's license was suspended prior to a hearing on the question of liability. The Court does not have such a situation in the instant case; here the judgment debtor suffers no deprivation, suspension or sequestration without an opportunity for a hearing.[12] The fact is that a judgment does not, as was the situation uniformly in the cases cited by appellants, effect a dispossession or deprive the debtor of the beneficial use of, or title to, the property or right which is the subject of the action.[13] As noted in appellants' brief, this Court

[11] In contrast to *Sniadach's* facts, Pennsylvania law prohibits wage garnishment: Pa. Stat. Ann., tit. 42, § 886.

[12] In *Ownbey* v. *Morgan,* 256 U.S. 94 (1921); *Coffin Bros.* v. *Bennett* 277 U.S. 29 (1928); and *McKay* v. *McInnes,* 279 U.S. 820 (1929), the Court upheld prejudgment garnishment of property other than wages.

[13] *Santiago* v. *McElroy,* 319 F.Supp. 284 (D.C., E.D. Pa. 1970), heavily relied upon by appellants, involved the deprivation of property, *by actual taking and sale under distraint proceedings before judgment and hearing.* That case is clearly distinguished from the instant case, for here, in *Swarb,* there is available to the debtor, *as a matter of right,* an opportunity to be heard on the merits *before any property is taken from him.* The same considerations which governed *Santiago* controlled earlier in *Sniadach* v. *Family Finance Corporation,* 395 U.S. 337 (1969), where the Court said, at page 340, that "the interim freezing of wages without a chance to be heard violates procedural due process." *Osmond* v. *Spence,* 39 U.S.L.W. 2660 (D.Del., May 13, 1971), is of little persuasive assistance because the Court in that case merely followed *Swarb;* however, the Delaware statute which was invalidated in *Osmond* permitted, *inter alia,* garnishment of wages without notice, thus effectively bringing the case into the posture of *Sniadach.*

recently addressed itself to the question of procedural due process in the matter of *Boddie* v. *Connecticut*, U.S. 28 L.Ed. 2d 113 (1971). In that case the Court said, at page 119:

> "Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. The State can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance [citing Windsor *v.* McVeigh, 93 U.S. 274 (1876)], or who, without justifiable excuse violates a procedural rule requiring the production of evidence necessary for orderly adjudication . . . ."

At a later point in its opinion in the *Boddie* case, the Court said, at page 119:

> "The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event."

It is clear that the right to a hearing on the merits is constitutionally protected. This Court, however, recognizes that the time and circumstances of such hearing need not occur in accordance with a specific time table nor within a specific format. In short, when appellants speak of the waiver of a constitutionally protected right, they put the "rabbit in the hat" by assuming the exclusive validity of a procedural format in accordance with their

own preference. They *assume* that there can be no due process of law without a pre-judgment hearing; and they simultaneously deny that a post-judgment, pre-execution hearing can afford due process. There are no cases to support these assumptions.

In Pennsylvania, judgment debtors have available to them the right to a hearing on the merits. It is true that it is necessarily, and by definition, the case that petitions to open and petitions to strike judgments are post-judgment procedural remedies. To that extent a pre-judgment hearing is waived; the right to a post-judgment hearing on the merits is not. That the post-judgment remedies are available is not disputed by the appellants. The issue, then, is neither deprivation of property without due process, nor a deprivation of process itself; the issue is when such process must be made available and whether the individual can knowingly postpone it.

In its order, the Court below stated as follows:

> ". . . no judgment may be entered against members of the class described . . . upon relevant documents . . . unless it has been shown that the signers of such clauses have intentionally, understandingly, and voluntarily waived all rights lost under Pennsylvania law . . . when executing a document containing such a clause . . . ."

The Court below seriously erred in evaluating the extent to which a debtor has available to him the necessary information to make an "intentional, understanding and voluntary" decision whether or not to execute a lien document.

2. Intentional, Understanding and Voluntary Conduct

The Court below entirely misconstrued the import of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*), Title I of which is commonly referred to as the

"Truth-in-Lending Act" and Federal Reserve Board Regulation "Z" (12 C.F.R. 226 ff.) which implements the Act. The Court below concluded that the Truth-in-Lending Act and Regulation "Z" provided borrowers in mortgage transactions the opportunity to rescind such transactions; and that the Act and the Regulation offered no comparable protection to other consumers. The Court's conclusions in both instances were erroneous.

The Truth-in-Lending Act provides, at 15 U.S.C. 1635(a), as follows:

> "Except as otherwise provided in this Section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this Section and all other material disclosures required under this part, whichever is later, by notifying the creditor, in accordance with regulations of the Board of its intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this Section, the rights of the obligor under this Section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to exercise his right to rescind any transaction subject to this Section."

An exception exists in the case of a first mortgage negotiated for the purpose of financing the purchase of a dwelling.

Section 226.2(z) of Regulation "Z" provides:

> " 'Security interest' and 'security' mean any interest in

property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust and *other consensual or confessed liens* whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment of performance of an obligation." (Emphasis supplied.)

Additionally, where a lien or security interest in real property is given, *including* a first mortgage negotiated for the purpose of financing the purchase of a dwelling, Section 226.8(b)(5) requires the following disclosures:

"A description or identification of the type of *any security interest held or to be retained or acquired* by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, *an explanation of the manner in which the creditor retains or may acquire a security interest* in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after acquired property will be subject to the security interest, or if

other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired." (Emphasis supplied.)

It is singularly noteworthy that the security interest referred to need not have been perfected. The fact that it is contingent, or a mere expectancy, or a mere possibility is sufficient to bring it within the protective provisions of the Act and Regulation.

Thus, under the Truth-in-Lending Act and Regulation "Z", the creditor *must* disclose to the consumer (debtor), *prior* to the consummation of the credit transaction, any lien or security interest which the creditor will or may by perfection obtain thereby. In every respect, the legal presumptions and burdens inure to the benefit of the debtor; they are onerous to the creditor, for the slightest error on the part of the creditor will involve penalties of noticeable magnitude. At any event, the law very carefully prescribes the nature, form and content of required credit disclosures. Can the consumer who fails to take notice thereof be heard to complain that he has been misled or denied pertinent information? It is submitted that the consumer who has been given the required disclosures and credit information ignores such at his peril.

So far as concerns the debtor's right under the Truth-in-Lending Act to rescind certain transactions Section 226.9(a) of Regulation "Z" provides as follows:

> "Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day following the date

of consummation of that transaction or the date of delivery of the disclosures required under this Section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram or other writing of his intention to do so. Notification by mail shall be considered given at the time mailed; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business."

Section 226.9(b) of Regulation "Z" prescribes the precise form of notice which the creditor is required to give to the consumer advising him of his right to rescind that transaction which may result in a lien. The Regulation prescribes not only the precise language of the notice, but also the type size and number of copies which must be delivered. Failure of the creditor to provide such disclosures and notices subjects him to civil and criminal penalties. The effect of this provision is to give the consumer an opportunity to review the wisdom of his conduct prior to making an economic commitment, and the right to withdraw if the wisdom thereof is found wanting.

The Congressional findings and declaration of purpose in the enactment of the Consumer Credit Protection Act are set forth in 15 U.S.C. 1601:

"The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure *a meaningful disclosure of credit terms* so that

the consumer will be able to compare more readily the various credit terms available to him and *avoid the uninformed use of credit.*" (Emphasis supplied.)

It is true that, when appellants (plaintiffs below) commenced this suit, the Truth-in-Lending Act had been in effect for only five months; accordingly, it is possible that these plaintiffs did not receive the information now required, in the manner now required, under the Truth-in-Lending Act.

However, the import of the Truth-in-Lending Act is its effect upon the consumer's "intent, understanding and volition." Since the Truth-in-Lending Act was designed to promote information and selectivity among consumers, it cannot now be said that consumers are denied the necessary information to make an informed choice whether or not to deal with a particular creditor or on such creditor's terms.

It must be recognized that the Congress, in prescribing the afore-quoted disclosure requirements and rescission provisions, impliedly acknowledged the constitutional validity of consensual and confessed liens as viable and enforceable security devices.

To this point, also, the appellants have protested against contracts of adhesion. This protest must also fail, for the very purpose of the Truth-in-Lending Act was to enable consumers to secure sufficient information, before entering into credit transactions, to determine the providence or improvidence thereof, and to avoid the latter by trading elsewhere.

With the disclosures required under the Truth-in-Lending Act and Regulation "Z", the Court below should have found that the individual consumer is provided sufficient information to act on a knowledgeable and informed basis. *Otherwise the Truth-in-Lending Act has failed of its purpose and the appellants have not asserted this.*

B. *Contract*

Clearly, under the Truth-in-Lending Act, contracts of adhesion can be avoided. The consumer has this choice; whether he exercises that choice prudently is properly a matter of concern to the State courts and legislature. At the same time a particular creditor may or may not insist that a warrant of attorney be executed. It is, after all, in a very real sense one method by which the creditor evaluates the risk which he is being asked to take with *his* goods or *his* capital. If the creditor has disclosed to his customer the security interest required, as provided by the Truth-in-Lending Act, can his insistence on this measure of protection be seriously criticized on a constitutional basis? It is submitted that it cannot.

The Court below acknowledged that a consumer could enter into a contract or consumer transaction and in doing so provide his creditor with predetermined remedies. That this is so is clearly evident in the multiple exceptions which the Court below provided to its injunctive order. However, as noted, the Court below had ample basis to deny the injunction altogether. In short, the Court below was clearly not aware of the information available to even the most humble users of credit, regardless of income; and that Court's decision would most certainly have been different had it had this awareness.

In the context of the operation of the credit union movement, the warrant of attorney to confess judgment is a valid and viable contractual provision which permits the securing of credit transactions which might otherwise require rejection or denial. In such transactions, judgment notes are most assuredly executed "intentionally, understandingly and voluntarily," for the parties to such transactions are governed not only by the protective provisions of the Truth-in-Lending Act, but also by the spirit of mutuality and integrity that underscores the philosophy of the credit union movement.

C. *Remedies*

Just as an informed consumer can exercise selectivity in his credit transactions, so he can by contract rearrange the timing of his remedies. Should the consumer believe a judgment to have been improperly or improvidently entered, he has procedural remedies available to him in the form of a petition to open the judgment or a petition to strike the judgment.

The appellants have complained of the expense of a proceeding to open a judgment. They have, however, chosen to overlook the fact that there is expense also in defending a suit in assumpsit commenced by complaint. It is possible that the expense of the former may exceed the latter in some instances. However this factor cannot be postulated as a general rule, although this is appellant's clear implication. Just as there are filing fees, deposition costs and attorneys' fees involved in proceedings to open judgments, there are similar fees and costs involved in defending a lawsuit commenced by complaint in the conventional way. There has been no showing that the financial burden and inconvenience involved in the opening of a judgment is any greater in the final analysis than would be the expense and inconvenience of defending an action in assumpsit.

The appellants also complain of the shifting of the burden of proof inherent in proceedings on a petition to open a judgment. The requirements are neither so grave nor so burdensome as the appellants suggest. An application to open a judgment is an equitable proceeding and is governed by equitable principles: *Devinney* v. *Lynch*, 372 Pa. 570 (1953). When, for example, a preponderance of the evidence, or the weight of the evidence, is in favor of the judgment debtor's allegations, which present a sufficient defense, the judgment will be opened: *Bright* v. *Diamond*, 189 Pa. 476 (1899). In effect, all that is required of a judgment debtor in a procedure to open a judgment

is a legally sufficient reason. These are principles of long standing in Pennsylvania. Following the opening of the judgment, the debtor is entitled to a trial by jury on the merits. Whether or not the judgment debtor may be required to pay accrued sheriff's costs is in the equitable discretion of the court; it is not procedurally automatic as appellants imply.

In *Boddie* v. *Connecticut*, U.S. , 28 L.Ed. 113 (1971), this Court said, at page 117:

> "The legitimacy of the State's monoply over techniques of final dispute settlement, even where some are denied access to its use, stands unimpaired where recognized, effective alternatives for the adjustment of differences remain."

The foregoing quotation governs this case. The substantive law and procedural remedies afforded in Pennsylvania are such that "recognized, effective alternatives" to the conventional action in assumpsit are available.

Nor is this principle one of recent origin. This Court said, in *Windsor* v. *McVeigh*, 93 U.S. 274, 278 (1876):

> "The period within which the appearance must be made and the right to be heard exercised, is, of course, a matter of regulation, depending either upon positive law, or the rules or orders of the court, or the established practice in such cases."

It is clear that this Court has acknowledged, for nearly a century, that due process is served if a hearing on the merits is afforded. And the time therefor is to be determined by the State.

D. *Due Process*

In the final analysis, it is not the law which is objectionable, but its application in some instances. It cannot be denied that the confession of judgment process

has on occasion been abused by over-anxious and unscrupulous creditors. There has been no showing that this type of creditor is representative of the majority. It is submitted that there is no constitutional principle that a law or process which is susceptible to misuse in some instances is *per se* offensive to the Constitution.

It is submitted that proeedural due process is not denied by the entry of judgment by confession and that there is no deprivation of any property right resulting from such judgment. This Court has held that "due process requires that there be an opportunity to present every available defense; but it need not be before the entry of judgment": *American Surety Co.* v. *Baldwin,* 287 U.S. 156, 168 (1932). In *Bower* v. *Casanave,* 44 F. Supp. 501 (D.C., S.D.N.Y., 1941) the Court said, in passing upon an attack on a judgment entered by confession:

> "Obviously it is not unconstitutional. It needs no further citation of authority to show that judgments by confession have been recognized and ruled upon by the United States Supreme Court."

In striking down a pre-judgment replevin statute the Court in *Laprease* v. *Raymours Furniture Company,* 315 F. Supp. 716, 725 (D.C., N.D.N.Y. 1970) said:

> "In so declaring, we do not hold or intend to intimate that nothing less than a full adversary evidentiary hearing prior to seizure, will comport with the requirements of procedural due process."

The Court implicitly acknowledged that due process is satisfied if, as in Pennsylvania, a hearing on the merits is available at some point prior to execution.

Abuses of statutory procedures, it is submitted, are properly the subject of state corrective action. In *Otis*

Co. v. *Ludlow*, 201 U.S. 140, 154 (1906), Mr. Justice Holmes said for the Court:

> "We cannot wholly neglect the long settled law and common understanding of a particular state in considering the plaintiff's rights. We are bound to be very cautious in coming to the conclusion that the Fourteenth Amendment has upset what thus has been established and accepted for a long time."

In support of their contention that the confession of judgment procedures violate due process, appellants cite a substantial number of criminal law cases. It is submitted that these citations are inapposite; the instant case involves civil liabilities, civil procedures and civil remedies.[14] Additionally, appellants have relied heavily on "equal protection" cases (without treating the issue of "equal protection") which have no persuasiveness in this particular due process context. This case involves actions on debts—not marriage and divorce (*Boddie* v. *Connecticut*, U.S. , 28 L.Ed. 2d 113 (1971)); not adoptions (*Armstrong* v. *Manzo*, 380 U.S. 545 (1965); and not any type of case wherein the subject matter is marked by substantive and procedural uniqueness.

Due process of law does not require that this Court supervise the relations of the parties to every social or commercial transaction;

> "Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts. . . ."; *Boddie* v. *Connecticut*, U.S. , 28 L.Ed. 2d 113, 118 (1971).

Additionally, the Court should not be confined to an analysis of isolated statutes without the opportunity to

[14] In *Griffin* v. *Illinois*, 351 U.S. 12 (1956), the Court emphasized that criminal due process does not control in civil cases.

view them in context. The disclosures required under the Truth-in-Lending Act provide ample basis for a determination that the granting of a contractual authorization to confess judgment is not an uninformed act. Where the entry of judgment in the first instance is *prima facie* consensual and informed, it should not be presumed to be unconscionable or in contravention of constitutional due process.

III. Execution Process.

As noted, appellants imply that the execution process is inherently and automatically an extension of the confession of judgment process. It is not. In credit union practice, it is common and customary, that judgment should be entered on a note with no specific intent that execution should ever follow.

Appellants complain that notice of execution is inadequate. It is submitted that the contention is without merit. Pennsylvania Rule of Civil Procedure 2958 provides, in its pertinent parts, as follows:

> "(a) Within twenty (20) days after the entry of judgment the plaintiff shall mail to the defendant, by ordinary mail addressed to the defendant at his last known address, written notice of the entry setting forth the date, the court, term and number and the amount of the judgment, and file with the Prothonotary an affidavit of mailing of the notice. Failure to mail the notice and file the affidavit shall not affect the lien of the judgment.
>
> (b) Within twenty (20) days after the entry of judgment the plaintiff may issue a writ of execution even if the notice has not yet been mailed and the affidavit of mailing has not yet been filed. The lien of any levy or attachment made pursuant to such a writ within or after the twenty (20) day period shall be valid. How-

ever, no further proceedings may be had pursuant to such writ until twenty (20) days after the notice has been mailed and the affidavit of mailing has been filed.

(c) If no affidavit has been filed within the twenty (20) day period after the entry of judgment, no writ of execution may be issued thereafter until twenty (20) days after the affidavit of mailing has been filed.[15]

* * * * * *

The time period allotted is identical to the time allotted by Rule 1026 of the Pennsylvania Rules of Civil Procedure for the filing of an answer to a complaint in assumpsit.

In addition to the aforesaid notice of execution, the burden of which is upon the judgment creditor, the Court's attention is also called to the provisions of Philadelphia Rule of Civil Procedure 3129*(f) which provides as follows:

"(1) Notice to be given prior to execution upon judgment entered on bond accompanying a mortgage. No execution shall issue upon a judgment entered on a bond accompanying a mortgage to condemn or sell the mortgaged premises unless the plaintiff, or some person on his behalf, shall file of record an affidavit setting forth, to the best of his knowledge, information, and belief, the name and address of the real owner or owners of the premises, and that written notice of the date of entry of said judgment, with the court, term, and number thereof, has been sent by registered or certified mail to such owner or owners and to the obligor on the bond. If the affidavit shall aver that the plaintiff, or the person making the affidavit on his behalf, does not know and has not

[15] Cf., *Osmond* v. *Spence*, 39 U.S.L.W. 2660 (D.Del., May 13, 1971), where 10 day notice of sale (as compared with Pennsylvania 20 day notice of entry of payment) was held to be insufficient.

been able to ascertain the owner or owners of the mortgaged premises or their addresses, or the names or addresses of some of them, or the whereabouts of the obligor, such an affidavit shall be a compliance with this rule as to the owner or owners and obligor whose names or addresses are unknown.

(2) Notice to be given upon any execution for the sale of real estate.

At or after the time of the issuance of any writ of execution for the sale of any real estate, the plaintiff, or some person on his behalf, shall give written notice by personal service on, or by registered or certified mail to, the defendant in the writ and to the real owner or owners of the real estate to be sold, stating the place, date, and hour of the intended sale and the real estate to be sold, which date shall be at least ten days after the giving of such notice as aforesaid, and shall, before the date of the sale, file an affidavit in the office of the Prothonotary that said notice has been given in accordance with this rule, or that the plaintiff or the person making the affidavit on his behalf does not know and has not been able to ascertain the real owner or owners of said real estate or their addresses, or the names or addresses of some of them, or the whereabouts of the defendant in the writ, in which case such an affidavit shall be a compliance with this rule as to the real owner or owners whose names or addresses are unknown, or as to the defendant in the writ whose whereabouts are unknown."[16]

Again, the burden of providing meaningful, provable notice and of filing proof of same with the Prothonotary, is upon the judgment creditor. Falsification of an affidavit of notice is, of course, a matter of perjury.

[16] These procedures are in addition to, and not in lieu of, the requirements of Rule 2958, *supra*.

As a practical matter, in credit union practice executions on confessed judgments are rare. Nonetheless, it is submitted that the notice requirements set forth in the afore-quoted rules of civil procedure provide the judgment debtor ample opportunity to pursue such remedies as may be appropriate under the circumstances of the individual case. It is to be noted, however, that the process of execution is independent from the procedure for the entry of judgment by confession. Appellants have implied that the former is merely an extension of the latter; this is clearly not the case since additional procedural measures are required for the purpose of initiating an execution.[17]

CONCLUSION

The question for consideration by the Court is one of due process. There has been no substantial discussion of the question of the denial of "the equal protection of the laws" under the fourteenth amendment. It is submitted, without further discussion, that the order of the Court below *does* deny equal protection in that: (1) its substance as regards individual and conjugal income is arbitrary, and (2) its substance as regards mortgage transactions and intentional, understanding and voluntary conduct is in disregard of the true import of an Act of Congress, to wit: the Truth-in-Lending Act.

For all of the reasons stated above, it is respectfully submitted that the judgment of the Court below should be reversed in its entirety and that this suit should be dismissed. It is further respectfully submitted that the Court should hold that the Pennsylvania statutes and rules of procedure which are the subject of this appeal are

[17] It is especially noteworthy that appellants are attacking Pennsylvania Rules of Civil Procedure 2950 to 2976. These Rules became effective on January 1, 1970, whereas this suit was commenced in December 1969. There has been no showing that any of the plaintiff-appellants has been aggrieved, in any manner, by any process under these Rules. Consideration of these Rules should not be before this Court.

constitutionally valid and consistent with substantive and procedural due process under the fourteenth amendment of the United States Constitution.

Finally, it is respectfully submitted that the informed use of a consensual judgment, entered by confession, for the purpose of securing a credit transaction "for provident or productive purposes" is totally consistent with substantive and procedural due process, and that this Court should so hold.

Respectfully submitted

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APPENDIX "A"

The challenged Statutes and Rules of Civil Procedure of the Commonwealth of Pennsylvania.

STATUTES AND RULES

The Act of April 14, 1834, Pa. Stat. 333, 377, 17 P.S. § 1482 (1962) provides as follows:

> "The prothonotaries and clerks aforesaid shall have and exercise, respectively, in the courts to which they severally belong, and with full effect in term time and vacation, the powers and authorities following, to wit: They shall have power
>
> I. To sign and affix the seal of the respective court to all writs and process, and also to the exemplifications of all records and process therein.
>
> II. To take bail in civil actions depending in the respective court.
>
> III. To enter judgments at the instance of plaintiffs, upon the confession of defendants.
>
> IV. To sign all judgments.
>
> V. To take the acknowledgment of satisfaction of judgments or decrees entered on the record of the respective court.
>
> VI. To administer oaths and affirmations in conducting the business of their respective offices."

The Act of February 24, 1806, Pa. Stat. 334, 4 Sm.L. 270, § 28, as amended, 12 P.S. § 739 (Supp. 1970) provides as follows:

> "It shall be the duty of the prothonotary of any court of record, within this Commonwealth, on the application of any person being the original holder (or assignee of such holder) of a note, bond, or other instrument of writing, in which judgment is confessed, or containing a warrant for an attorney at law, or other person to confess judgment, to enter judgment

against the person or persons, who executed the same for the amount, which, from the face of the instrument, may appear to be due, without the agency of an attorney, or declaration filed, with such stay of execution as may be therein mentioned, for the fee of one dollar, to be paid by the defendant; particularly entering on his docket the date and tenor of the instrument of writing, on which the judgment may be founded, which shall have the same force and effect, as if a declaration had been filed, and judgment confessed by an attorney, or judgment obtained in open court, and in term time; and the defendant shall not be compelled to pay any costs, or fee to the plaintiff's attorney, when judgment is entered on any instrument of writing as aforesaid.

In the County of Philadelphia, when the amount appearing to be due is not more than the maximum amount over which the Municipal Court has original jurisdiction, the judgment shall be filed and docketed in the municipal court."

The Act of March 21, 1806, Pa. Stat. 558, 4 Sm.L. 326, § 8, as amended, 12 P.S. § 738 (Supp. 1970), provides as follows:

"It shall be the duty of the prothonotaries, respectively, on the application of any persons willing to become parties in the amicable suit, to enter the same without the agency of an attorney, and when thereunto required, and on confession in writing, executed in presence of two or more witnesses, expressing the amount due to the plaintiff, (which confession shall be filed in his office), he shall enter judgment against the defendant, for the amount expressed as aforesaid, with stay of execution as may be agreed upon by the parties and the prothonotary shall receive fifty cents, for every such entry, to be paid by the defendant in

the suit, and when any suit is ended, the clerk of the court before which it was pending, shall on the request of the plaintiff expressed in writing, enter satisfaction thereon.

In the County of Philadelphia, when the amount of the judgment is not more than the maximum amount over which the Municipal Court has original jurisdiction, the judgment shall be entered in the Municipal Court."

Pennsylvania Rules of Civil Procedure 2950 to 2976 provide as follows:

Rule 2950. Definition.

As used in this chapter

"action" means a proceeding to enter a judgment by confession for money pursuant to an instrument authorizing such confession.

Rule 2951. Methods of Proceeding.

(a) Judgments by confession may be entered by the prothonotary, as authorized by the Act of February 24, 1806, P.L. 334, 4 Sm.L. 270, § 28, as amended, 12 P.S. 739, without the agency of an attorney and without the filing of a complaint, declaration or confession, for the amount which may appear to be due from the face of the instrument. The judgment may include interest computable from the face of the instrument.

(b) An action which is not filed under the Act of February 24, 1806, P.L. 334, 4Sm.L. 270, § 28, as amended 12 P.S. 739, shall be commenced by filing with the prothonotary a complaint substantially in the form provided by Rule 2952. Even though the instrument is one on which judgment could be entered by the prothonotary under the Act of 1806, the plaintiff may commence the action by filing a complaint.

(c) If the instrument is more than ten (10) years old or if the original cannot be produced for filing or if it requires the occurrence of a default or condition precedent before judgment may be entered, the occurrence of which cannot be ascertained from the instrument itself, the action must be brought under Subdivision (b).

(d) If the instrument is more than twenty (20) years old, judgment may be entered only by leave of court after notice and the filing of a complaint under subdivision (b).

(e) When the plaintiff proceeds under Subdivision (b) and the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature is not attached to the complaint, judgment may be entered only by leave of court after notice.

Rule 2952. Complaint. Contents.

The complaint shall contain the following:

(a) the names and last known addresses of the parties;

(b) the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature; if the original is not attached, an averment that the copy attached is a true and correct reproduction of the original; if neither the original nor a reproduction can be attached, an explanation why they are not available;

(c) a statement of any assignment of the instrument;

(d) either a statement that judgment has not been entered on the instrument in any jurisdiction or if

it has been entered an identification of the proceedings;

(e) if the judgment may be entered only after a default or the occurrence of a condition precedent, an averment of the default or of the occurrence of the condition precedent;

(f) an itemization of the amount then due, which may include interest and attorneys' fees authorized by the instrument;

(g) a demand for judgment as authorized by the warrant;

(h) if the instrument is more than twenty (20) years old, or if the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature is not attached to the complaint, an application for a court order granting leave to enter judgment after notice;

(i) signature and verification in accordance with the rule relating to the action of assumpsit.

Rule 2953. Successive Actions.

(a) Where an instrument authorizes judgments to be confessed from time to time for separate sums as or after they become due, successive actions may be commenced and judgments entered for such sums.

(b) If an instrument authorizes entry of judgments for money and in ejectment, the entry of judgment in ejectment shall not prevent the entry of judgment for money.

Rule 2954. Judgment in Name of Holder, Assignee or Transferee.

Judgment shall be entered only in the name of a holder, assignee or other transferee.

Rule 2955. Confession of Judgment.

(a) In an action commenced by a complaint under Rule 2951(b), the plaintiff shall file with the complaint a confession of judgment substantially in the form provided by Rule 2962.

(b) The attorney for the plaintiff may sign the confession as attorney for the defendant unless an Act of Assembly or the instrument provides otherwise.

Rule 2956. Entry of Judgment.

The prothonotary shall enter judgment in conformity with the confession.

Rule 2957. Execution. Amount. Items Claimed.

Plaintiff may include the amount due, interest, attorneys' fees and costs in his praecipe for a writ of execution under Rule 3251(5). However, where judgment has been entered under Rule 2951(a) and there has been a record appearance of counsel at any stage of the proceedings and attorneys' fees are authorized in the instrument, these fees may be included in the praecipe for a writ of execution in whole or in part to the extent that the total amount claimed, excluding interest, does not exceed the amount of the judgment.

Rule 2958. Execution. Notice of Entry of Judgment.

(a) Within twenty (20) days after the entry of judgment the plaintiff shall mail to the defendant, by ordinary mail addressed to the defendant at his last known address, written notice of the entry setting forth the date, the court, term and number and the amount of the judgment, and file with the prothonotary an affidavit of mailing of the notice. Failure to mail the notice or file the affidavit shall not affect the lien of the judgment.

(b) Within twenty (20) days after the entry of judgment the plaintiff may issue a writ of execution even if the notice has not yet been mailed and the affidavit of mailing has not yet been filed. The lien of any levy or attachment made pursuant to such a writ within or after the twenty (20) day period shall be valid. However, no further proceedings may be had pursuant to such writ until twenty (20) days after the notice has been mailed and the affidavit of mailing has been filed.

(c) If no affidavit has been filed within the twenty (20) day period after the entry of judgment, no writ of execution may be issued thereafter until twenty (20) days after the affidavit of mailing has been filed.

(d) At the time of the issuance of a writ of execution upon a judgment entered by confession the prothonotary shall endorse thereon the date of the judgment, the judgment was entered by confession and if an affidavit of mailing has been filed the date of the filing of the affidavit.

(e) No waiver of notice or of the filing of the affidavit of mailing shall be valid.

Rule 2959. Striking Off or Opening Judgment. Pleadings. Procedure.

(a) Relief from a judgment by confession shall be sought by petition. All grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition.

(b) If the petition states prima facie grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by general rule or special order.

(c) A party waives all defenses and objections which he does not include in his petition or answer.

(d) The petition and the rule to show cause shall be served as provided in Rule 233, and the answer as provided in Rule 1027.

(e) The court shall dispose of the rule on petition and answer, and any testimony, depositions, admissions and other evidence. The court for the cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment.

Rule 2960. Proceedings Upon Opening of Judgment. Pleadings.

If a judgment is opened in whole or in part the issues to be tried shall be defined by the complaint if a complaint has been filed, and by the petition, answer and the order of the court opening the judgment. There shall be no further pleadings.

Rule 2961. Effective Date. Pending Actions.

These rules shall become effective on the first day of January, 1970. These rules shall apply only to actions commenced after the effective date except Rules 2959 and 2960 which also apply to judgments theretofore entered.

Rule 2962. Confession of Judgment Where Action Commenced by Complaint.

[CAPTION]

Pursuant to the authority contained in the warrant of attorney, the original or a copy of which is attached to the complaint filed in this action, I appear for the

defendant(s) and confess judgment in favor of the plaintiff(s) and against defendant(s) as follows:

* (Principal) * (Penal) Sum ..... $ _____

Other authorized items:

_____ $ _____
(Specify)

** Interest ..... $ _____

** Attorney fees ..... $ _____

* Strike out inapplicable item.

** Interest and attorney fees may be included only if authorized by the warrant.

_____
(Attorney for Defendant(s))

Rule 2970. Conformity.

Except as otherwise provided in this chapter, the procedure in an action to enter a judgment in ejectment for possession of real property by confession pursuant to an instrument authorizing such confession shall be in accordance with the rules relating to confession of judgment for money.

Rule 2971. Commencement of Action.

(a) An action shall be commenced by filing with the prothonotary a complaint substantially in the form provided by Rule 2952. The complaint shall also contain a description of the property and a demand for judgment in ejectment.

(b) The plaintiff shall file with the complaint a confession of judgment substantially in the form provided by Rule 2974.

Rule 2972. Successive Actions.

If an instrument authorizes judgment to be entered in ejectment and for money, the entry of judgment for money shall not prevent the entry of judgment in ejectment.

Rule 2973. Effective Date. Pending Actions.

These rules shall become effective on the first day of January, 1970. These rules shall apply only to actions commenced after the effective date except Rules 2959 and 2960 which also apply to judgments theretofore entered.

Rule 2974. Confession of Judgment.

[CAPTION]

Pursuant to the authority contained in the warrant of attorney, the original or a copy of which is attached to the complaint filed in this action, I appear for the defendant(s) and confess judgment in ejectment in favor of the plaintiff(s) and against the defendant(s) for possession of the real property described as follows:

_____

_____

_____

(Description)

_____

(Attorney for Defendant(s))

Rule 2975. Acts of Assembly Not Suspended.

These rules governing Confession of Judgment for Money or for Possession of Real Property shall not be deemed to suspend or affect:

(1) Section 2 of the Act approved March 21, 1772, 1 Sm.L 389, § 2, 12 P.S. 742.

(2) Section 28 of the Act approved February 24, 1806, P.L. 334, 4 Sm.L 270, as amended by the Act of June 10, 1957, P.L. 281, No. 142, 12 P.S. 739, insofar as it relates to the power of the prothonotary to enter confessed judgments without the intervention of an attorney or the filing of a complaint.

(3) Section 40 of the Act approved March 28, 1827, P.L. 154, 17 P.S. 1903.

(4) Section 40 of the Act approved June 13, 1836, P.L. 568, 12 P.S. 316.

(5) Section 1 of the Act approved April 21, 1846, P.L. 424, 12 P.S. 1555.

(6) Section 11 of the Act approved March 23, 1853, P.L. 706, 17 P.S. 1921.

(7) Section 3 of the Act approved April 22, 1856, P.L. 532, 17 P.S. 1922.

(8) Section 1 of the Act approved March 14, 1876, P.L. 7, 12 P.S. 978.

(9) Section 1 of the Act approved May 26, 1897, P.L. 94, 12 P.S. 740.

(10) Sections 1 and 2 of the Act approved May 17, 1929, P.L. 1804, as amended June 25, 1937, P.L. 2325, 12 P.S. 743, 744.

(11) Section 1 of the Act approved June 10, 1935, P.L. 295, No. 129, 12 P.S. 745.

(12) Section 1 of the Act approved March 27, 1945, P.L. 83, as amended July 13, 1961, P.L. 592, 12 P.S. 913, except insofar as it conflicts with Supreme Court Rule 14 relating to local office or address of attorneys within the county.

(13) Sections 2 and 3 of the Act approved June 28, 1951, P.L. 927, 68 P.S. 602, 603.

Rule 2976. Acts of Assembly Suspended.

The following Acts of Assembly are suspended insofar as they apply to the practice and procedure in actions to confess judgment for money or for possession of real property as defined in these rules, entered in any court which is subject to these rules.

(1) Section 28 of the Act approved February 24, 1806, P.L. 334, 4 Sm.L 270, 12 P.S. 739, as amended by the Act of June 10, 1957, P.L. 281 No. 142, only insofar as it may be inconsistent with these rules.

(2) Section 8 of the Act approved March 21, 1806, P.L. 558, 4 Sm.L. 326, 12 P.S. 738.

(3) Section 1 of the Act approved July 9, 1897, P.L. 237, 12 P.S. 911, except insofar as it relates to preservation of the lien of judgment pending proceedings to open or strike.

(4) Section 2 of the Act approved July 9, 1897, P.L. 237, 12 P.S. 912.

(5) AND all other Acts or parts of Acts inconsistent with these rules.